

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

DANIEL E. CUEVA, et al.,

Defendants.

No. 2:24-cv-1680 DJC AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

I. Background

On October 2, 2025, the Magistrate Judge issued a screening order in which she found the Third Amended Complaint ("TAC") adequately stated an Eighth Amendment claim for deliberate indifference to plaintiff's nutritional needs against defendants Patterson, Dail, Rodriguez, and Sandoval; ADA and RA claims against defendant CMF and defendant Patterson in her official capacity; and a First Amendment retaliation claim and Fourth Amendment unlawful search claim against defendant Silva. ECF No. 44 at 5-6. The Magistrate Judge further found that Plaintiff's allegations in the TAC do not state § 1983 claims against defendants Patterson, Dail,

1 Rodriguez, Sandoval or Silva in their official capacities; an Eighth Amendment claim
2 for deliberate indifference to adequate nutrition against defendant Rodriguez based
3 on defendant Rodriguez's conduct in August 2023; an Eighth Amendment claim for
4 deliberate indifference to plaintiff's risk of contracting COVID-19 against defendant
5 Dail; a Fourteenth Amendment conditions of confinement claim; a Fourteenth
6 Amendment Equal Protection Clause claim against defendant Silva; conspiracy claims
7 under 42 U.S.C. § 1985(2) and/or § 1985(3); and any state law claims. *Id.* at 6-10, 12.

8 The Magistrate Judge also concurrently filed findings and recommendations
9 recommending that Plaintiff's third motion for preliminary injunction and/or temporary
10 restraining order be denied because the Court lacks authority to grant preliminary
11 injunctive relief and Plaintiff failed to put forth evidence sufficient to establish a
12 likelihood of irreparable harm. ECF No. 45 at 6-11. The findings and
13 recommendations which were served on Plaintiff contained a notice to Plaintiff that
14 any objections to the findings and recommendations were to be filed within twenty-
15 one days. *Id.* at 11.

16 Plaintiff filed objections to the findings and recommendations, which include
17 objections to the magistrate judge's screening order. ECF No. 46. He also filed
18 motions for appointment of mental health and dietician experts. ECF Nos. 47, 48.

19 II. Plaintiff's Objections

20 Plaintiff agrees with the Magistrate Judge's screening order to the extent he
21 agrees to drop the following claims: § 1983 claims against defendants Patterson, Dail,
22 Rodriguez, Sandoval or Silva in their official capacities; an Eighth Amendment claim
23 for deliberate indifference to adequate nutrition against defendant Rodriguez based
24 on defendant Rodriguez's conduct in August 2023; a Fourteenth Amendment
25 conditions of confinement claim; a Fourteenth Amendment Equal Protection Clause
26 claim against defendant Silva; and any state law claims. *Id.* at 1. However, he objects
27 to the extent the Magistrate Judge found he failed to state an Eighth Amendment
28 claim for deliberate indifference to plaintiff's risk of contracting COVID-19 against

1 defendant Dail and conspiracy claims under 42 U.S.C. § 1985(2) and/or § 1985(3). *Id.*
2 at 1-5. He also objects to the order because the court failed to acknowledge Plaintiff's
3 argument on controlling United States Supreme Court case law. *Id.* at 2, 7.

4 Plaintiff's objects to the Magistrate Judge's findings and recommendations
5 because he claims his original E-Filing complaint included a request for injunctive
6 relief and he disagrees that he failed to show a likelihood of irreparable harm. *Id.* at 2,
7 5-7. The Court construes Plaintiff's filing as a request for reconsideration of the
8 Magistrate Judge's screening order filed on October 2, 2025 (ECF No. 44) and
9 objections to the Magistrate Judge's findings and recommendations (ECF No. 45).

10 Pursuant to E.D. Local Rule 303(f), a magistrate judge's orders shall be upheld
11 unless "clearly erroneous or contrary to law." *Id.* Upon review of the entire file, the
12 Court finds that it does not appear that the Magistrate Judge's October 2, 2025,
13 screening order was clearly erroneous or contrary to law. Accordingly, it will be
14 affirmed.

15 Plaintiff will have the option to (1) proceed immediately on his First and Fourth
16 Amendment claims against defendant Silva, ADA and RA claims against defendants
17 CMF and Patterson (in her official capacity), and Eighth Amendment deliberate
18 indifference to adequate nutrition claims against defendants Patterson, Dail,
19 Rodriguez, and Sandoval as set for in Section III of the Magistrate Judge's October 2,
20 2025, screening order, see ECF No. 44 at 5, or (2) file a Fourth Amended Complaint
21 for the limited purpose of re-alleging the cognizable claims identified by the Court
22 and adding back in his request for injunctive relief.¹

23 Also, in accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local
24 Rule 304, this Court has conducted a *de novo* review of the Magistrate Judge's

25
26 ¹ Although plaintiff's original complaint sought injunctive relief, the Court has informed
27 Plaintiff, on at least three separate occasions, that the court cannot refer to a prior
28 pleading in order to make his amended complaint complete. See ECF Nos. 12 at 7,
34 at 9, 44 at 16. As such, if Plaintiff wants to seek injunctive relief in this action, he
must state so in a Fourth Amended Complaint.

1 findings and recommendations regarding Plaintiff's motion for a preliminary
2 injunction or temporary restraining order. Having carefully reviewed the entire file,
3 the Court finds the Magistrate Judge's October 2, 2025, findings and
4 recommendations to be supported by the record and by proper analysis.

5 III. Motions for Appointment of Experts

6 Plaintiff seeks appointment of a mental health expert and a dietician expert
7 under Federal Rule of Evidence 706 and in the interest of equal justice. ECF Nos. 47
8 at 2, 49 at 2. Plaintiff's motions are denied for the following reasons.

9 First, although Plaintiff claims he seeks "independent experts," his motions
10 appear to seek appointment of an expert witness for his own benefit—to not rely
11 entirely on defendants' evidence. See ECF Nos. 47 at 2, 49 at 2. This Court, however,
12 does not have authority to appoint a neutral expert witness to help support Plaintiff's
13 claims. *Wilkins v. Barber*, 562 F. Supp. 3d 943, 946 (E.D. Cal. Oct. 27, 2021) (collecting
14 cases) ("Rule 706 does not contemplate court appointment and compensation of an
15 expert witness as an advocate for plaintiff."). Second, Plaintiff fails to demonstrate this
16 action is so complex it requires appointment of a neutral expert witness to assist the
17 trier of fact. Lastly, these motions are denied as premature. *Id.* at 947 ("Until the
18 undersigned has had the opportunity to review the evidence and arguments
19 presented by the parties on summary judgment, the undersigned cannot determine
20 whether the issues are so complex as to require the testimony of a neutral expert to
21 assist the trier of fact."); see also *Bruister v. Asuncion*, No. CV-1705106-PSG-RAO, 2018
22 WL 5903908, at *2 (C.D. Cal. May 30, 2018) (denying motion where case is still at the
23 pleading stage); *Cejas v. Brown*, No. 18-CV-00543 WQH JLB, 2019 WL 3220154, at *2
24 (S.D. Cal. July 2019) (finding that the plaintiff's motion for appointment of a neutral
25 expert witness was premature since the case was still in its discovery phase).

26 Accordingly, IT IS HEREBY ORDERED that:

27 1. The Magistrate Judge's screening order filed October 2, 2025 (ECF No. 44)
28 is AFFIRMED. Plaintiff may proceed with the TAC as screened in Section III of the

1 Magistrate Judge's screening order or file a Fourth Amended Complaint to re-allege
2 the cognizable claims identified in Section III and reincorporate his request for
3 injunctive relief.

4 2. The Magistrate Judge's findings and recommendations filed October 2,
5 2025 (ECF No. 45) are ADOPTED in full;

6 3. Plaintiff's motion for a preliminary injunction and/or temporary restraining
7 order (ECF No. 35) is DENIED.

8 4. Plaintiff's motions for appointment of experts (ECF Nos. 47, 49) are
9 DENIED.

10 5. The matter is referred to the Magistrate Judge for all further pretrial
11 proceedings.

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13 IT IS SO ORDERED.

14 Dated: **November 7, 2025**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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